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No. 06-613

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In The

Supreme Court of the United States

CHARLES MEYERS,

Petitioner,

v.

CITY OF LITTLETON AND THE PEOPLE OF THE STATE OF COLORADO AND THE MUNICIPAL COURT IN AND FOR THE CITY OF LITTLETON,

Respondents.

On Petition For Writ Of Certiorari To The District Court Of Colorado, Arapahoe County

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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RECAP OF QUESTIONS PRESENTED FOR REVIEW

1. Home Rule and Equal Protection: Can the legislature grant home rule municipalities with independence that exempts them from the Rule of Law? CRS 16-1-102 permits, and the Colorado Supreme Court grants, municipal courts the power to impose penalties in excess of those provided by Colorado statute, and other states, for the same crime.

2. Knowing, intelligent waiver of counsel: Can a generic, spoken video advisement (addressed to a group of about 100 defendants on a 20' TV screen) that includes the warning that the court has the power to impose a jail sentence, substitute for a specific warning that the prosecution is ***definitely seeking*** jail time against a specific Defendant in a specific action?

3. Erroneous Jury Instruction: The municipal court included a jury instruction describing "abandonment," (an element of the state statute for theft CRS 18-4-401), although "abandonment" was not an element of the municipal ordinance, (shoplifting) which ***was*** the crime charged [Littleton Municipal Code 6-4-30(A)]. Was it unconstitutional for the court to provide the jury with instructions to convict using a misapplied element of the state criminal statute, even though the element was not an element of the crime charged?

4. Evidence: Can an accuser (a merchant) be exempt from the Rules of Evidence in an action prosecuted as a crime under the municipal code, because the municipal code violation is not prosecuted by a State actor?

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RESPONDENTS' STATEMENT OF THE CASE

There are no contradictions in Respondents' recitation of events. Respondents' recitation of facts confirms that there are no misstatements in the Petition. However, one misstatement in the Respondents' Opposition pertaining to evidence will be addressed below on page 4. Petitioner Meyers points out that the Respondents' recitation of facts includes an event not mentioned in the Petition – nor the charges. That is: Petitioner Meyers "ate a doughnut" when at the grocery store. This fact is irrelevant[1] and certainly not reason enough for denying certiorari.

RESPONDENTS' RESPONSE TO ISSUE 1 – HOME RULE AND EQUAL PROTECTION

Respondent addresses the equal protection issue on page 5 of their Opposition by citing *McLaughlin v. Florida,* (a case about interracial marriage) and arguing that the equal protection laws are only available to minorities or protected classes. If this were true, then whites would have no remedy when denied due process. This logic is **not** true, as this court has held that *Pace v. Alabama*, 106 U.S. 583, at 584, that a person, "whatever his race . . . shall not be subjected for the same offense, to any great or different punishment." Here, Colorado citizens are subject to disparate treatment because of the difference in punishment meted out in the state jurisdiction versus the municipal jurisdiction for essentially the same crime ***– even though the procedure for arriving at the punishment is different in both jurisdictions.*** To wit: Petitioner Meyers' Petition points out [at page 8 and 9] that the lower courts held

[1] No charges were leveled for eating a doughnut and Meyers did not deny the surprise testimony at trial to this event.

that Meyers' complaints about evidentiary defects, (pursuant to his reliance on Criminal Rules of Evidence), were not applicable in the municipal prosecution because *"[I]n order for there to be a constitutional issue . . . there must be a state action. Here, there is none."* Apparently, a municipal court's hands are not tied by the irritating restraints of rules inspired by the Constitution. Even the Colorado Statute, C.R.S. § 16-1-102 and Colorado Criminal Rule 54(a) exempts a municipal court from following rules intended to provide due process to the accused, as pointed out on page 3 of the Petition. Certainly, in this case, the defendant was denied every opportunity to present a meaningful defense – which he would have been entitled to had he been prosecuted in a state jurisdiction. Why should he have been denied that right in a municipal jurisdiction?

Lastly, the Respondents assert that this Court cannot touch this issue because to do so would make the "Court sit as a super legislative body" in violation of the concept of federalism. Petitioner is not asking this court to amend municipal court ordinances. Petitioner is asking this court to have municipal court procedures brought into alignment with the U.S. Constitution and to require that criminal prosecutions comply with Rules of Criminal Procedure – or else municipal violations should only be prosecuted under civil procedure. **The municipal courts should not have the power to deprive a citizen of freedom after a criminal prosecution – if they are not *also* subject to providing due process during a prosecution.**

RESPONDENTS' RESPONSE TO ISSUE 2 – KNOWING, INTELLIGENT WAIVER OF COUNSEL

Petitioner Meyers has asked this court to determine if a defendant should be warned that jail time is ***definitely*** being sought by the prosecution, and/or the court, pursuant to CRS 16-5-501 (which provides for the prosecution to inform a defendant that jail time is being sought) in order for there to be a full knowing, informed waiver of counsel. Petitioner Meyers stated that he relied on *Argersinger v. Hamlin*, **and** the Colorado Statute, C.R.S. § 16-5-501 (cited verbatim in Petition on page 2) when deciding to forego hiring a lawyer for trial. Is it a denial of due process to withhold the information necessary to allow a defendant to make an informed decision whether or not to ***proceed to trial*** at his peril, without training or experience in trial procedure? Meyers would not have proceeded *pro se* if he had been told that as a first time offender, he would still be sentenced to jail.

All of Respondents' citations offered in rebuttal to this question, pertain to a defendant's right to appear *pro se*. That is not the issue presented here.

RESPONDENTS' RESPONSE TO ISSUE 3 – ERRONEOUS JURY INSTRUCTION

Respondent is silent on this issue asserting that no constitutional right is applicable.

Petitioner has asked this Court to decide if it is fair to allow a jury to find a defendant guilty of an element of a crime that was not charged. Can a defendant be convicted for an element not part of the municipal crime charged, simply because the *state counterpart* of the crime *has* such an

element? (The two crimes were mixed, matched, consolidated and co-mingled for the purpose of jury instructions). Fully argued on pages 10-11 of the Petition. Municipal jurisdictions want it both ways – they want their jurisdiction to be completely independent of the state when it suits them to ignore criminal rules for due process – and they want to supplement their codes with state law when it guarantees a desired outcome. It was a denial of due process to have defendant Meyers convicted of "abandonment" when he had no opportunity to address a defense to that element because that element is not part of the ordinance charged. Doublespeak is also evident by the fact that the summons issued by Municipal Courts states, "By the People of the City of Littleton on behalf **of the State of Colorado.**" Yet, the municipal court said that the state rules and procedures do not apply because the prosecution was not a "state actor."

Which is it?

RESPONDENTS' RESPONSE TO ISSUE 4 – ALTERED EVIDENCE

Respondent disposes of the evidence issue by stating that the court found that Meyers failed to object to the tainted, altered evidence. This Court held in *Ker et Ux. v. California*, 374 U.S. 23, that while erroneous findings are not usually corrected by the Supreme Court, a state court is "by no means insulated against examination by the United States Supreme Court and . . . it will . . . make an independent examination of the facts, the findings and the record so that it can determine for itself whether, in the state court findings . . . the Supreme Court has been respected."

Contrary to the lower court's "findings," Petitioner

Meyers did file motions objecting to the evidence[2] (as stated by Respondents on page 3 of the Opposition) and he verbally objected just prior to trial when the altered (shortened) videotape was presented to him for the first time. That objection is reproduced here, in the Appendix to this Reply.

Respondents ask this Court to deem the altered evidence valid because the missing exculpatory evidence was not deleted by the prosecutor - it was deleted by the accusing merchant – the grocery store[3]. Because no Rule 16 Disclosure was made by the prosecutor regarding the video tape, the defendant proceeded to trial relying on Rule 16 to disallow any surprise evidence. On the morning of trial, the prosecutor presented a 5 minute portion of video[4] saying that the other 45 minutes (with exculpatory evidence) was not in his hands. The staged shoplifting event was shown to the jury, but not the part where the Defendant put merchandize back. If the prosecution's evidence can be altered by a witness with no offense to due process, then any prosecutor can – with a wink and a nod – tell their witness to destroy evidence to assist in the prosecution.

Here, the defective evidence is excused because it was not destroyed by a state actor, or the prosecutor. Petitioner asks this court to determine if (a) the shopkeeper should have been required to follow rules of criminal procedure or (b) ***if*** such rules are not applicable to the one holding the evidence, should not shoplifting be prosecuted only as a civil procedure?

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[2] One of Meyers' motions objecting to evidence is Appendix E of the Petition. The court denied all verbal and written objections.

[3] As declared in the Trial transcript page 12 Lines 11 & 22; page 34, L 10; P41, L9.

[4] And other not previously disclosed "evidence".

COMPELLING REASONS TO GRANT REVIEW

All the issues raised herein have one common denominator:

Is the Constitution – and the Rule of Law - enforceable against municipalities?

The municipal courts say "NO" because they are not "state actors." They are exempt from state rules of procedure pursuant to C.R.S. § 16-1-102 and Colorado Rules of Criminal Procedure, Rule 54(a), which states: *"These Rules do not apply to municipal ordinance and charter violations."* With that power, the municipal courts have abused Citizens of the United States.

Too many citizens are without means to reach this Court to address the blatant, unchecked powers of the municipal courts. The great majority of citizens prosecuted in this jurisdiction are without an advocate because they cannot afford an attorney. Additionally, citizens prosecuted at the municipal court level are without the skills to articulate their objections to these prosecutions. Is it any wonder that 1 in every 32 Americans are in jail, probation or parole[5] in this land of the free? Without supervision by this court, the Rule of Law does not exist at the municipal court level. The record in this case will show this Court that the City of Littleton treats their jurisdiction as a fiefdom – not subject to the laws of this land.

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[5] Statistic provided by the Justice Department.

This is in contradiction to the intent of the constitution where this Court has held that due process protects "those suspected or known to be offenders as well as the innocent." *Ker et Ux. v. California*, 374 U.S, 23; 83 S. Ct. 1623, (1963); *Go-Bart Importing Co. v. U.S.*, 282 U.S. 344, 357 (1931).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant review.

VERIFICATION

I hereby state under the penalties of perjury, 28 USC 1746, that the statements made in this reply, and the Appendix attached hereto, are accurate and true.

Respectfully submitted:

s/ *Charles Meyers*

APPENDIX TO REPLY TO OPPOSITION

PAGE 7, LINES 22-25 OF **TRIAL TRANSCRIPT, MARCH 11, 2005:**

[DEFENDANT OBJECTING TO DEFECTIVE EVIDENCE]

(TO THE COURT DURING PRE-TRIAL:)

22 DEFENDANT: Secondly, I had – I will ask
23 again to bar the videotape. It is not the complete event,
24 as you had ordered by your own e-mail that's in the file.
25 You had ordered for the entire sequence of events to be

PAGE 8, LINES 1-4 OF TRIAL TRANSCRIPT, MARCH 11, 2005:

1 presented, video wise. And if the only video that is
2 being presented is this – the same copy that I have, it
3 represents five minutes out of a 50-minute time frame.
4 And for that reason I ask that the video be barred.